



To the Honorable Council
City of Norfolk, Virginia

October 13, 2015

From: David Ricks, Director of Public Works

Subject: Ordinance approving an amendment to the encroachment agreement between the City of Norfolk and Little Dog Diner, LLC so as to increase the area of authorized encroachment at 1917 Colley Avenue.

Reviewed:

Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 2/6

Approved:

Marcus D. Jones, City Manager

Item Number:

R-10

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Little Dog Diner, LLC
1917 Colley Avenue
Norfolk, Virginia 23517

III. **Description:**

This agenda item is an Ordinance approving an amendment to the encroachment agreement between the City of Norfolk ("City") and Little Dog Diner, LLC ("Diner"), so as to increase the area of the authorized encroachment at 1917 Colley Avenue to 7'9" by 44'3".

IV. **Analysis:**

This encroachment in this location will allow an expanded encroachment area for Diner at 1917 Colley Avenue.

V. **Financial Impact:**

Liability insurance has been provided naming the City as an additional insured in the amount of \$1,000,000; therefore, there should be no financial risk to the City.

VI. **Environmental:**

N/A

VII. Community Outreach/Notification:

Public notification for this agenda item was conducted through the City's agenda notification process.

VIII. Board/Commission Action:

The Department of Public Works and the City Attorney's Office have reviewed this request for encroachment and offer no objections. Review and approval by the Architectural Review Board and the City Planning Commission is not required.

IX. Coordination/Outreach:

This letter and ordinance have been coordinated with Department of Public Works, the Department of Planning and Community Development, and the City Attorney's Office.

Supporting Material from the Department of Public Works:

- Ordinance
- Encroachment agreement
- Exhibit A and B

Form and Correctness Approved: By 
Office of the City Attorney Contents Approved:By 
DEPT. Public Works

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING AN AMENDMENT TO THE ENCROACHMENT AGREEMENT BETWEEN THE CITY OF NORFOLK AND LITTLE DOG DINER, LLC SO AS TO INCREASE THE AREA OF THE AUTHORIZED ENCROACHMENT AT 1917 COLLEY AVENUE.

- - -

WHEREAS, the City of Norfolk ("City") entered into an encroachment agreement ("Agreement") with Little Dog Diner, LLC ("Diner"), on March 25, 2015, for an outdoor dining area measuring approximately 8' by 35'9'' at 1917 Colley Avenue, a copy of which Agreement is attached hereto as Exhibit A; and

WHEREAS, the City has received an application from Diner requesting the Agreement be amended to increase the area of the aforementioned outdoor dining encroachment at 1917 Colley Avenue to 7'9'' by 44'3'', as shown in Exhibit B attached hereto; and

WHEREAS, Council is agreeable to Diner's request that the Agreement be amended; now, therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1: - That the application by Diner requesting the Agreement between the City of Norfolk and Diner be amended so as to increase the area of the authorized encroachment at 1917 Colley Avenue from 8' by 35'9'' to 7'9'' by 44'3'', as shown in Exhibit B, is hereby approved.

Section 2: - That in all other respects the terms and conditions of the Agreement shall remain in full force and effect.

Section 3: - That the City Manager and other proper officers of the City are authorized to amend the Agreement as set forth above and to do all things necessary and proper for its implementation.

Section 4: - That this ordinance shall be in effect from and after its adoption.

EXHIBIT A TO ORDINANCE**ENCROACHMENT AGREEMENT**

This Encroachment Agreement (hereinafter "Agreement") is made and entered into this 25th day of March, 2015, by and between the **City of Norfolk**, a municipal corporation of the Commonwealth of Virginia (hereinafter "City"), and **Little Dog Diner, LLC dba The "New" Donut Dinette** (hereinafter "Donut Dinette").

WITNESSETH:

1. **ENCROACHMENT AREA.** City hereby grants permission to Donut Dinette to encroach into the right of way of Colley Avenue at 1917 Colley Avenue, with an area measuring approximately 8' by 35'9" on Colley Avenue, with a total of 286 square feet, more or less, as shown on **Exhibit A** attached hereto ("Encroachment Area"), for the purpose of outdoor dining and no other purpose.
2. **USE.** Donut Dinette shall be permitted to occupy the Encroachment Area for outdoor dining uses in conjunction with the operation of the restaurant as an eating and drinking establishment.
3. **TERM; TERMINATION.** The term of the permission to encroach granted hereby shall be no longer than five (5) years and shall commence on April 1, 2015, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on March 31, 2020. However, it is expressly understood that the permission granted hereby is expressly subject to the right of revocation by the Norfolk City Council, and that in the event of such revocation, Donut Dinette, or its successors or assigns, if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area.
4. **COMPENSATION.** As compensation for the privilege of encroaching into the right of way, Donut Dinette shall pay City annual rent in the amount of One Thousand Seven Hundred Sixteen and 00/100 Dollars (\$1,716.00) in quarterly installments of \$429.00

beginning on the first day of April, 2015 or the day the ordinance is effective whichever is later. The rent shall be paid by check payable to the Norfolk City Treasurer and sent to the Real Estate Office, Department of General Services, 232 E. Main Street, Suite 250, Norfolk, Virginia 23510.

5. **LATE FEES.** For any late payments received 15 days after the date due, Donut Dinette shall pay a late fee of five percent (5%) of the amount not paid when due.

6. **UTILITIES.** City shall not be responsible for utilities of any type used within the Encroachment Area. Donut Dinette shall pay all utility meter and utility services charges for all utilities, including but not limited to gas, electricity, water, telephone, sewer, and any other necessary to serve the Encroachment Area.

7. **REPAIRS.** Donut Dinette shall keep and maintain the Encroachment Area in good and complete state of repair and condition. Donut Dinette shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and workmanlike manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8. **REQUIREMENTS OF PUBLIC LAWS.** Donut Dinette shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Encroachment Area. In addition, Donut Dinette shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

9. **CITY'S RIGHT TO ENTER AND CURE.** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment

Area, ascertaining compliance with this Agreement, and making any repairs which City deems necessary as a consequence of any failure of Donut Dinette to meet its obligations under this Agreement. The cost of any such repairs shall be deemed additional compensation payable to the City on demand. Any entry upon the Encroachment Area or cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon Donut Dinette default in making repairs.

10. **NOTICE.** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

To City: Department of General Services – Real Estate Office
232 E. Main Street, Suite 250
Norfolk, Virginia 23510

To Donut Dinette: The "New" Donut Dinette
1917 Colley Avenue
Norfolk, Virginia 23517

With copy to: City Attorney
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS.** Donut Dinette agrees that it will not introduce onto the Encroachment Area any toxic, hazardous or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. Donut Dinette will not allow any air, water or noise pollution to occur in the Encroachment Area. Donut Dinette hereby agrees to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that Donut Dinette shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to occupancy by Donut Dinette.

12. **DESTRUCTION.** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY.** City shall not be liable for any damage or injury which may be sustained by Donut Dinette or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, if any, upon the Encroachment Area, or by reason of the elements.

14. **REMOVAL OF SNOW.** Donut Dinette agrees to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS.** Donut Dinette covenants and agrees that it will not make any improvements, changes installations, renovations, additions or alterations in and about the Encroachment Area without the prior written consent of the City other than the approval given by Norfolk's Architectural Review Board and Norfolk's Planning Commission. If Donut Dinette installs or makes any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, Donut Dinette hereby agrees to remove, if requested by City, any improvements, additions, installations, renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event Donut Dinette fails to remove and is requested to do so by City, then City may remove the improvements, additions, installations, renovations, changes and Donut Dinette shall pay for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING.** City and Donut Dinette agree that the permission to encroach granted hereby may not be assigned by Donut Dinette without written approval from Norfolk's City Manager.

17. **SURRENDER BY DONUT DINETTE.** Donut Dinette will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. Donut Dinette shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of Donut Dinette use of the Encroachment Area. If Donut Dinette has been requested to remove and fails to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and Donut Dinette shall be liable to City for the cost of any removal and disposal.

18. **INSURANCE.** Donut Dinette shall maintain in full force and effect a Commercial General Liability insurance policy, occurrence form, for the duration of this agreement. The policy will provide combined single limit for bodily injury, death and property damage insurance in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate, insuring City and Donut Dinette against liability claims and suits arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas. The policy shall be endorsed as primary insurance in favor of City naming the City, its officers, employees, agents and representatives as additional named insured, as evidenced by a Certificate of Insurance provided to the City within thirty (30) days after adoption of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to the City Manager if the insurance is cancelled or modified.

19. **INDEMNIFICATION.** Donut Dinette shall indemnify and save harmless City from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and

actions of any kind arising out of the use and occupation of the Encroachment Area by reason of any breach or nonperformance of any covenant or condition of this Agreement by Donut Dinette, or by Donut Dinette's act of negligence, and not caused in whole or in part by City.

20. **FIXTURES.** City covenants and agrees that no part of the improvements constructed, erected or placed by Donut Dinette in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and Donut Dinette to covenant and agree that all improvements of every kind and nature constructed, erected or placed by Donut Dinette in the Encroachment Area shall be and remain the property of Donut Dinette, unless such improvements are not removed upon termination of this Agreement.

21. **LIENS OR ENCUMBRANCES.** If because of any act or omission of Donut Dinette, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, Donut Dinette shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to Donut Dinette of the filing thereof, and Donut Dinette shall have the right to contest the validity of such lien if it so chooses.

23. **APPLICABLE LAW.** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the City of Norfolk, Virginia.

24. **WAIVER OF TRIAL BY JURY.** To the extent permitted by law, City and Donut Dinette mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to Donut Dinette by this agreement.

25. OTHER REQUIREMENTS.

(a) Donut Dinette shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(b) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Architectural Review Board.

(c) Donut Dinette use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(d) A trash can compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(e) Tables and chairs will be arranged according to plan approved by Norfolk's Architectural Review Board.

IN WITNESS WHEREOF, Parties have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

THE CITY OF NORFOLK

By: Marcus D. Jones
Marcus, D. Jones, City Manager

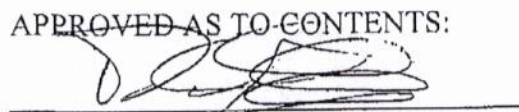
ATTEST:

Heather D. Dwyer
City Clerk

**LITTLE DOG DINER, LLC
DBA THE "NEW" DONUT DINETTE**

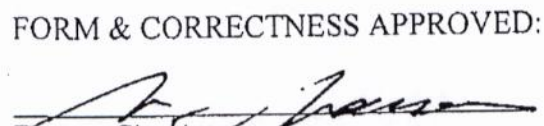
By: Steve DeCruz
Print Name: Steve DeCruz
Print Title: Partner

APPROVED AS TO CONTENTS:

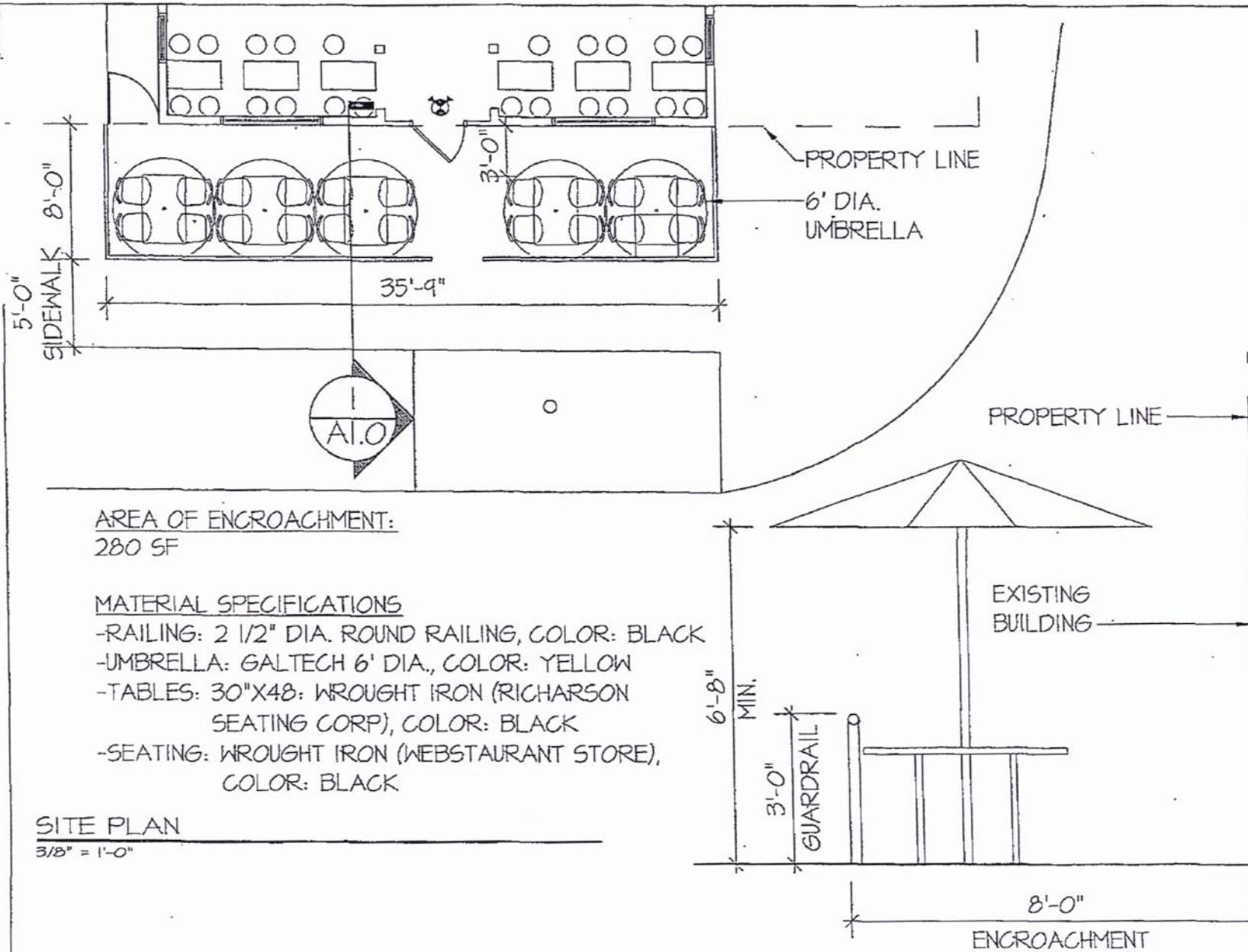


Director, General Services

FORM & CORRECTNESS APPROVED:



Deputy City Attorney



AREA OF ENCROACHMENT:
280 SF

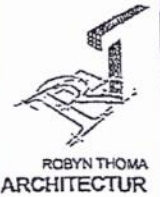
MATERIAL SPECIFICATIONS

- RAILING: 2 1/2" DIA. ROUND RAILING, COLOR: BLACK
- UMBRELLA: GALTECH 6' DIA., COLOR: YELLOW
- TABLES: 30"X48: WROUGHT IRON (RICHARSON SEATING CORP), COLOR: BLACK
- SEATING: WROUGHT IRON (WEBSTRAUTANT STORE), COLOR: BLACK

SITE PLAN

3/8" = 1'-0"

1 SECTION
3/8" = 1'-0"



913 W. 21st Street, Suite
Norfolk, VA 23517
Ofc: 757.622.7100
Fax: 757.640.1014

THE NEW DONUT DINETTE
1917 COLLEY AVE
NORFOLK, VIRGINIA

REVISIONS

DATE	COMMENTS

1 OF 1
01/30/2005
DATE
14-004
COMM. NO.

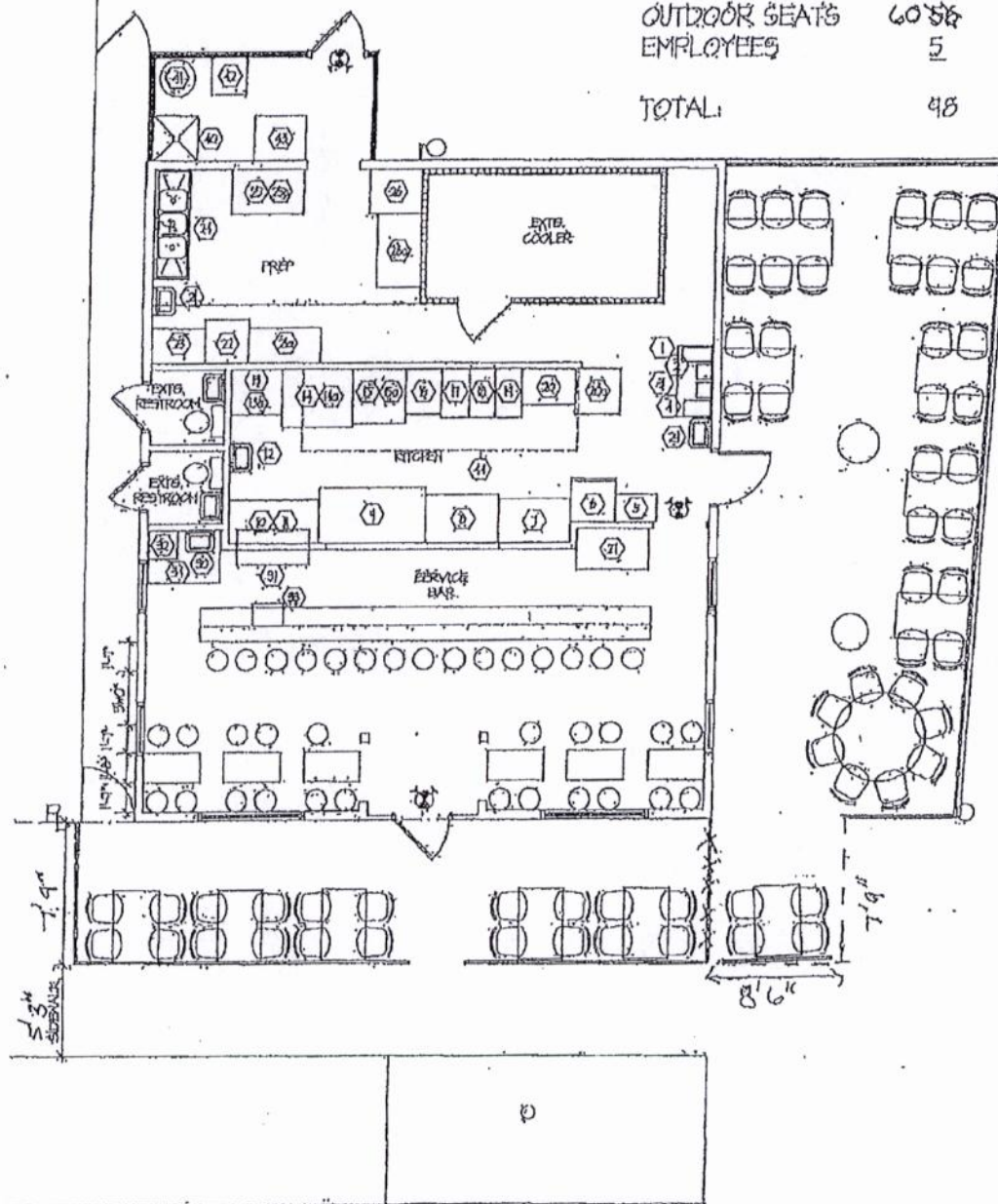
DRAWN CSB

CHECKED RJT

A.I.O.

EXHIBIT B TO ORDINANCE

CAPACITY	
INDOOR SEATS	22
BAR SEATS	15
OUTDOOR SEATS	60
EMPLOYEES	5
TOTAL	48



THE NEW DONUT DINETTE - 1917 COLLEGE AVENUE
 1967 - 1968